

The Amstgericht Hamburg ordered a hearing on this motion and thereupon by order of November 10, 1923 (page 23 of the Amstgericht record) referred the controversy for the Landgericht Hamburg.

The respondent moved at the hearing before the Landgericht Hamburg to dismiss the motion for a temporary decree, with costs.

The proceedings were based by the representatives of the parties on their respective papers. The petitioner based his motion for temporary relief on its written pleas of December 22, 1924.

GROUNDS OF DECISION

The court holds that the petitioner, under the power of attorney submitted to the Court, which is subscribed by both Societies, is authorized to act and maintain his application on behalf of the League and of the Two societies constituting it.

The said two societies represent the copyrights of the composers, authors and publishers with whom they have concluded contracts to that effect. The respondent cannot claim as a defense that it is unable to decide in all cases whether any particular works are under the protection of certain particular societies or leagues. The respondent may perform only such works as to which it has acquired the performing right by contract; else it becomes liable for damages and is punishable under sections 11, 37, 38 of the Copyright Law of June 19, 1901.

The respondent has not denied that the compositions of the composers, Solz, Mascagn, Eilenberg and Siede (marked red in the schedules) are included in the works the performing rights in which are controlled by the petitioning League as League property. It has been satisfactorily established by the affidavit of the investigator Max Freund (Schedule C of the paper of December 22, 1924) that the respondent has publicly performed the said compositions on the 2nd and 5th days of December, 1924. It is also satisfactorily established by the same affidavit that the respondent has publicly performed on November 2, 1924, the works marked blue in the newspaper "Norag" of October 31, 1924; the composers of said compositions are, as shown by Freund's affidavit, members of an American Society which has transferred its rights to the petitioner. Lastly, the respondent has on December 3, 1924, performed by radio, as was heard by Freund, the composition, "Lottchen, Ich fahr mit dir nach Norderney", (Lotta, I Go With You To Norderney) by Stolz. It has performed all of said compositions publicly, without having received the permission of the League. That the broadcasting of a musical work constitutes a public performance, is considered by the Court to be free from doubt.

In view of all the facts there is danger that the acts will be repeated; especially in view of the declaration of the respondent, above mentioned, that it is unable to determine when particular works are under the protection of particular societies or leagues. The granting of the motion for a temporary decree seems proper under No. 940, Code of Civil Procedure. Hence such a decree should be granted in the form of the motion of the petitioner.

(Signed) FRAMHEIN
RAUSCH
DEHMELT.

The correctness of the copy is certified by

The Clerk of the
Landgericht.
(Signature)

L. S.